

1 THE HONORABLE MARSHA J. PECHMAN

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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 PK FENSKE-BUCHANAN,) No. 2:11-CV-1656-MJP
12)
13 Plaintiff,)
14) STIPULATED PROTECTIVE ORDER
15 v.)
16)
17 BANK OF AMERICA, N.A., BAC HOME)
18 LOANS SERVICING L.P., and)
19 CORPORATE JOHN DOES (1-10),)
20)
21 Defendants.)
22)
23)
24)
25)
26)

17 It is hereby ORDERED as follows:

18 Certain documents and tangible things produced by the parties in response to any
19 interrogatory or request for production may be subject to the terms and conditions herein. For
20 purposes of this Stipulated Protective Order, the word “documents” shall have the meaning
21 contemplated by Rule 34 of the Federal Rules of Civil Procedure, and its meaning includes,
22 but is not limited to: (1) written, electronic, recorded, or graphic matter; (2) interrogatory
23 answers filed in this action; (3) requests to admit and responses thereto filed in this action; (4)
24 transcripts of and exhibits to depositions; (5) and any portions of any court papers filed in this
25 action that quote from or summarize any of these items.
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1 In no event shall any material obtained through discovery in this litigation be used for
2 any purpose whatsoever other than those related to this litigation.

3 **1. DESIGNATION**

4 If a party or an attorney for a party has a good faith belief that certain documents or
5 other materials (including digital information) subject to disclosure pursuant to a discovery or
6 other request are confidential and should not be disclosed other than in connection with this
7 civil action and pursuant to this Stipulated Protective Order, the party or attorney requesting
8 confidentiality (the “Designating Party”) shall stamp each such document or other material as
9 “**CONFIDENTIAL – Subject to Protective Order.**” With respect to deposition exhibits, it
10 shall be the duty of the Designating Party to designate as confidential the exhibits to which
11 confidentiality is claimed at the time of the deposition or within fifteen (15) days after
12 receiving the deposition transcript.

13 **2. TYPE AND CATEGORIES OF DOCUMENTS SUBJECT TO ORDER**

14 The parties have requested and may continue to request certain documents of one
15 another that the respective producing party contends contain confidential information, and
16 that are subject to protection as confidential under Rule 26(c)(1)(H) of the Federal Rules of
17 Civil Procedure, and *Foltz v. State Farm Mutual Automobile Ins. Co.*, 331 F.3d 1122 (9th Cir.
18 2003).

19 The documents and materials subject to designation as “**CONFIDENTIAL**” include,
20 but are not limited to, documents and materials that contain information that is proprietary in
21 nature; contains trade secrets; contains employee information; contains agent or subcontractor
22 information; or contains non-party consumer-specific information and documents, including
23 private consumer information that contains identifying, contact or private financial
24 information provided by or concerning a consumer, including documents relating to
25 individual loans, and any “nonpublic personal information” as identified by the Gramm-
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1 Leach-Bliley Act, 15 U.S.C. § 6801 et seq., and other equivalent privacy laws.

2 **3. ACCESS TO CONFIDENTIAL INFORMATION**

3 Except as hereinafter provided, material marked or otherwise designated as
4 **“CONFIDENTIAL”** shall not be disclosed to any person except:

5 (1) The parties;

6 (2) Counsel of record for the parties, consisting of Lane Powell PC, Patterson Buchanan
7 Fobes Leitch & Kalzer, Inc., P.S., including attorneys for the respective firms and supporting
8 personnel employed by the firms, such as paralegals, legal translators, legal secretaries, law
9 clerks, and litigation support employees;

10 (3) Outside counsel for Defendant Bank of America, N.A., for itself and as successor by
11 merger to BAC Home Loans Servicing, LP (“BANA”), Reed Smith LLP, including attorneys
12 and supporting personnel employed by Reed Smith LLP, such as paralegals, legal translators,
13 legal secretaries, law clerks, and litigation support employees;

14 (4) Experts retained by counsel to assist in this litigation; provided, however, that any
15 such expert has signed an undertaking in the form of the attached Exhibit A, the original of
16 which will be maintained by counsel for the party retaining such expert;

17 (5) Other individuals or entities retained by counsel identified in paragraphs (1) and (2)
18 above specifically engaged to assist in this litigation, including litigation consultants,
19 electronic discovery consultants, jury consultants, and mock jurors selected by counsel in
20 preparation for trial; provided, however, that the person or entity has signed an undertaking in
21 the form attached as Exhibit A, the original of which will be maintained by counsel retaining
22 such individuals or entities and need not be disclosed except upon Court order;

23 (6) Witnesses at a deposition, subject to the provisions related to use of confidential
24 information at a deposition provided in section 5 below.

25 (7) Witnesses at trial; provided, however, that any such witness has signed an undertaking
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1 in the form attached as Exhibit A or states on the record that the witness agrees to be bound
2 by the terms of this Stipulated Protective Order;

3 (8) The Court, its officers and staff, and court stenographers while engaged in the
4 performance of their official duties; and

5 (9) Mediators in this action who have first signed a certificate identical to Exhibit A or
6 who have otherwise agreed to be bound by this Order.

7 **4. PARTY'S RIGHT TO DESIGNATE TESTIMONY**

8 Any deposition or other testimony may be designated as confidential by counsel for
9 the Designating Party by any of the following means:

10 (a) Stating orally on the record of a deposition that certain information or testimony is
11 Confidential – Subject to Protective Order, or that the entire deposition transcript is so
12 designated; or

13 (b) Sending written notice within fifteen (15) days of receipt of the deposition transcript
14 designating all or a portion of the transcript as confidential. The deposition testimony shall be
15 treated as confidential prior to the expiration of this period.

16 **5. USE OF INFORMATION**

17 Information designated as “**CONFIDENTIAL**” shall be held in confidence by each
18 person to whom it is disclosed, shall be used only in connection with this litigation, shall not
19 be used for any business purpose unrelated to this action. No party or attorney or other person
20 subject to this Stipulated Protective Order shall distribute, transmit, or otherwise divulge any
21 document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof,
22 except in accordance with this Stipulated Protective Order. All produced confidential
23 information shall be carefully maintained so as to preclude access by persons who are not
24 entitled to receive such information. Nothing herein, however, is intended to prohibit or
25 proscribe the ability of outside counsel to provide to their client informed and meaningful
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1 advice, or to prevent counsel from aggregating such information or summarizing such
2 information for the client so long as it will not reveal or disclose confidential information.

3 Any party seeking to use confidential information during a deposition shall obtain a
4 statement on the record that the deponent and any other persons in attendance have agreed to
5 abide by the terms of this Stipulated Protective Order. If the deponent refuses to agree,
6 disclosure of such information to the witness during the deposition shall not constitute a
7 waiver of confidentiality, provided that, under such circumstances, the witness shall be asked
8 to read and sign the original deposition transcript in the presence of the court reporter, and no
9 copy of the transcript or related exhibits shall be given to the deponent. The terms of this
10 Stipulated Protective Order shall apply to those persons in attendance at depositions and shall
11 require the exclusion of persons not subject to the terms of the Stipulated Protective Order
12 from attending that portion of the deposition at which confidential information is discussed.

13 If any party or attorney wishes to file or use as an exhibit or as evidence at a hearing or
14 trial in this civil action, any “**CONFIDENTIAL**” document or other material, he or she must
15 provide reasonable notice to the party that produced the document or other material. The
16 parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by
17 either: (a) removing the “**CONFIDENTIAL**” marking; or (b) creating a mutually acceptable
18 redacted version that suffices for purposes of this civil action. If an amicable resolution
19 proves unsuccessful, the parties and/or attorneys may present the issue to this Court for
20 resolution. The proponent of continued confidentiality will have the burden of persuasion that
21 the document or other material should be withheld from the public record. *See, e.g., Press-*
22 *Enterprise Co. v. Superior Court*, 478 U.S. 1, 8-9 (1986); *Virginia Dept. Of State Police v.*
23 *Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004).

1 **6. CHALLENGES TO DESIGNATIONS AND FILING OF CONFIDENTIAL**
2 **DOCUMENTS**

3 If a party or an attorney for a party disputes whether a document or other material
4 should be marked “**CONFIDENTIAL**,” the parties and/or attorneys shall attempt to resolve
5 the dispute between them. If they are unsuccessful, the party or attorney seeking the
6 “**CONFIDENTIAL**” designation shall do so by filing an appropriate motion with this Court.
7 Until such time as the Court has ruled on any such motion, the protections under this
8 Stipulated Protective Order shall apply to the disputed designation.

9 To the extent that a non-producing party wishes to include documents marked
10 “**CONFIDENTIAL**” in a filing (other than the motion referred to herein), the burden will be
11 on the party advocating the sealing of documents to demonstrate the need for such protection
12 and that the requirements set forth in *Foltz* have been met.

13 The parties further agree to follow and abide by the provisions of LR 5(g) in the filing
14 of any sealed pleadings in this matter.

15 **7. RETURN OF DOCUMENTS**

16 The terms of this Stipulated Protective Order shall survive and remain in full force and
17 effect after the termination of this litigation. Within sixty (60) days after final conclusion of
18 all aspects of this litigation, all confidential documents subject hereto and all copies of the
19 same (other than those filed with the Court) shall be returned to the party or person that
20 produced such documents or, at the option of the producer, destroyed; provided, however, that
21 counsel for the parties shall be entitled to retain memoranda or pleadings embodying
22 information derived from such confidential material, to the extent reasonably necessary to
23 preserve a file on this litigation, which information shall not be disclosed to any other person.
24 All deposition transcripts and exhibits and any other material returned to the parties or their
25 counsel by the Court that contain confidential material shall also be destroyed or returned as
26 set forth above.

1 **8. APPLICATION TO COURT**

2 Notwithstanding anything to the contrary set forth herein, each party shall have the
3 right to apply to the Court at any time for an order granting other or additional protective
4 relief with respect to any confidential material, and the right to apply to the Court at any time
5 for an order modifying or lifting the protective order for good cause shown.

6 **9. REQUEST FOR CONFIDENTIAL DOCUMENTS**

7 If any party receives a subpoena or any other notice requesting documents designated
8 as confidential pursuant to the terms of this Stipulated Protective Order, that party must notify
9 counsel for the Designating Party before responding to the subpoena.

10 **10. EFFECT OF DESIGNATION ON AUTHENTICITY AND ADMISSIBILITY**

11 The placing of any confidentiality designation or a production identification number
12 on the face of a document produced shall have no effect on the authenticity or admissibility of
13 that document at trial.

14 Nothing contained in this Stipulated Protective Order, and no action taken pursuant to
15 it, shall prejudice the right of any party to contest the alleged relevancy, admissibility, or
16 discoverability of any document or information, whether confidential or not.

17 **11. INADVERTENT PRODUCTION**

18 The inadvertent production of any confidential, privileged or otherwise protected
19 material shall not be deemed a waiver or impairment of any claim of confidentiality, privilege
20 or protection, including, but not limited to, the attorney-client privilege and the protection
21 afforded to work-product materials, or the subject matter thereof.

22 Upon receipt of notice of such inadvertent production from the producing Party, the
23 receiving Party shall, within seven (7) business days of such notice, either (a) return all copies
24 of such document(s) to the producing Party other than copies containing attorney's notes or
25 other attorney work product that may have been placed thereon by counsel for the receiving
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1 Party and shall destroy all copies of such documents that contain such notes or other attorney
2 work product or (b) shall apply to the Court for resolution if the producing Parties' claim of
3 inadvertent production is disputed.

4 **12. CONTINUING JURISDICTION**

5 All provisions of this Stipulated Protective Order shall continue to be binding after the
6 conclusion of this action in its entirety, unless subsequently modified by agreement between
7 the parties or order of the Court, and the Court shall retain jurisdiction of this matter for the
8 purpose of enforcing this Stipulated Protective Order.

9 IT IS SO STIPULATED:

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11 *Attorneys for Defendant Bank of America, N.A., for itself and as successor by merger to*
12 *BAC Home Loans Servicing, LP ("BANA"):*

13 Date: _____

LANE POWELL PC

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15 By: _____
16 John S. Devlin III, WSBA No. 23988

17 *Attorneys for PK Fenske-Buchanan:*

18 Date: _____

PATTERSON BUCHANAN FOBES LEITCH
& KALZER, INC., P.S.

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21 By: _____
22 Michael A. Patterson, WSBA No. 7976
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1 **IT IS SO ORDERED.**

2 DATED this 16th day of March, 2012.

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7 Marsha J. Pechman
8 United States District Judge
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EXHIBIT A

I hereby certify my understanding that Confidential documents or information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order dated _____, 2012, in *PK Fenske-Buchanan v. Bank of America, N.A.*, United States District Court, Western District of Washington, Case No. 2:11-CV-1656-MJP. I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not disclose Confidential Information to anyone, except as allowed by the Order. I will keep all such Confidential documents and information in a secure place and in a secure manner to prevent unauthorized access to it. No later than 30 days after the termination of this action, I will return all such confidential documents or information, and any copies, notes, extracts, synopses, and/or summaries of such information that I create or that comes within my control to the attorney(s) who first provided it to me, or by whom I have been retained in this matter, or, alternatively, at my election, I will destroy such Confidential documents or information. I hereby consent to be subject to the personal jurisdiction of the United States District Court, Western District of Washington, with respect to any proceedings relative to the enforcement of that Order, including without limitation any proceeding related to contempt of court.

Dated: _____

AFFILIATION _____